

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Sicily Henderson

CASE 43B-0891-R-2022
43B 30116023

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

THIS EXEMPT CLAIM WAS FILED ON 2/18/2018. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 01/16/1985.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 4 ACRE-FEET PER YEAR.

The volume issue remark was not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to give the claimant an opportunity to file additional evidence if she so chose, an Order Consolidating Case and Setting Filing Deadline was issued on December 6, 2022 setting a February 6, 2023 filing deadline. The claimant filed nothing. The February 17, 2023 Order Entering Default And Setting Show Cause Deadline states:

As Sicily Henderson failed to comply with the Court's Order issued under section 85-2-248, MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is ORDERED that the default of Sicily Henderson is ENTERED.

The claimant can review the scanned copy of the claim file on the DNRC Water Right Query System at <http://wrqs.dnrc.mt.gov>. It appears the volume should be 4.00 ACRE-FEET as stated in the issue remark. Therefore, it is ORDERED that the deadline is **March 17, 2023** for Sicily Henderson to show cause in writing why the Court should not amend the volume to 4.00 ACRE-FEET. If nothing is filed by March 17, 2023, the Court will conclude the claimant agrees with amending the volume to 4.)) (sic 4.00) ACRE-FEET.

Nothing was filed.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree includes no volume. The volume should be 4.00 ACRE- FEET. The volume issue remark should be removed as addressed and resolved.
2. The remark concerning this exempt claim should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the volume issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

Service via USPS Mail:

Sicily Henderson
50 Meigs Rd
Livingston, MT 59047

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30116023 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SICILY HENDERSON
50 MEIGS RD
LIVINGSTON, MT 59047

Priority Date: DECEMBER 31, 1950

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 4.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	1	2S	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESESE	1	2S	9E	PARK